

REMARKS/ARGUMENTS

1. The Examiner rejected claims 1, 2, 4, 5, 7, 8, and 12 under 35 U.S.C. § 102(b) as being anticipated by Jacuzzi et al. (U.S. Patent No. 3,736,924). Claims 1, 2, 4-8, and 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi et al. ("Jacuzzi") in view of Satterfield (U.S. Patent No. 4,811,434) and Savage (U.S. Patent No. 4,672,692). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier (U.S. Patent No. 4,249,522) and Jones (WIPO Publication No. 88/00037). Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones, and further in view of Satterfield and Savage. Claims 6, 8, and 15 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which the invention pertains, or with which the invention is most nearly connected, to make and/or use the invention. The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. Lastly, the drawings were objected to under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. Reconsideration of this application is respectfully requested in view of the amendments and/or remarks provided herein.

Objections to the Drawings

2. The drawings were objected to under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims. In particular, the Examiner states that the "air bubbler" recited in claim 6, the "plurality of water jets" recited in claim 9, and the "air jet" recited in claim 15 must be shown in the drawings or the features canceled from the claims. Applicant disagrees with the Examiner's assertions and believes that his drawings clearly support all recited claim terminology. Nevertheless, in an effort to move prosecution forward in this case, Applicant has herein cancelled claims 6, 9 and 15, without prejudice, subject to refiling same in a continuation application. Accordingly, Applicant respectfully requests that the Examiner withdraw his objection to the drawings.

Objections to the Specification

3. The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. In particular, the Examiner states that there is not proper antecedent basis for the term "fluid" as set forth in claims 1 and 15, the term "air bubbler" as set forth in claim 6, the term "air jet" as set forth in claims 8 and 15, the subject matter set forth in claims 13 and 14, and the term "fluid jet" as set forth in claim 15. Applicant addresses each objection below.

With respect to the term "fluid" as set forth in claims 1 and 15, such term is used at lines 3 and 4 of the abstract and in original claims 1, 3, and 4. Nevertheless, Applicant has herein amended paragraph [0010] (page 3, line 17 through page 4, line 7) of Applicant's specification to recite the term "fluid" as originally contemplated by the use of such term in the abstract and original claims 1, 3, and 4.

With respect to the term "air bubbler" as set forth in claim 6, Applicant has herein cancelled such claim without prejudice, subject to refiling same in a continuation application.

With respect to the term "air jet" as set forth in claims 8 and 15, such term is fully supported at least on page 2, line 21 ("air and/or water orifices and/or jets"); page 9, line 14 ("air jets"); and page 10, line 1 ("air and/or water jets") of Applicant's originally filed specification. As a result, Applicant disagrees with the Examiner's objection to the use of such term in claims 8 and 15. Nevertheless, in an effort to move prosecution forward in this case, Applicant has herein cancelled such claims without prejudice, subject to refiling same in a continuation application.

With respect to the subject matter of claims 13 and 14, which claims have been cancelled herein but which subject matter has been incorporated into independent claims 1 and 7, Applicant disagrees with the Examiner's objection. The concept that pressurized fluid and/or air be directed upward onto at least one of a hand and a forearm of the bather is clearly set forth at various locations of Applicant's specification, including, without limitation, page 3, lines 15-19; page 6, lines 16-17; and page 7, lines 8-10.

With respect to the term "fluid jet" as set forth in claim 15, such term is not expressly used in the specification. However, such term is clearly supported at the locations of the specification noted above that support use of the term "fluid" and at various locations of the specification that support use of the term "water jet." Nevertheless, in an effort to move

prosecution forward in this case, Applicant has herein cancelled claim 15 without prejudice, subject to refiling same in a continuation application.

Based on the foregoing amendments to the specification and reasons overcoming the Examiner's various objections to the specification, Applicant respectfully requests that the Examiner withdraw his objection to the specification.

Rejection under 35 U.S.C. § 112, first paragraph

4. Claims 6, 8, and 15 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which the invention pertains, or with which the invention is most nearly connected, to make and/or use the invention. In particular, the Examiner asserts that the terms "air bubbler" as set forth in claim 6 and "air jet" as set forth in claims 8 and 15 are not properly enabled by the specification.

Applicant disagrees with the Examiner's assertions and believes that his specification clearly supports all recited claim terminology. Nevertheless, in an effort to move prosecution forward in this case, Applicant has herein cancelled claims 6, 8, and 15 without prejudice, subject to refiling same in a continuation application. Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of claims 6, 8, and 15 under 35 U.S.C. § 112, first paragraph.

Rejection under 35 U.S.C. § 102(b)

5. Claims 1, 2, 4, 5, 7, 8, and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jacuzzi. Applicant maintains his position that the armrest orifice disclosed in Jacuzzi is not "sized and shaped to direct a flow of pressurized fluid and/or pressurized air onto at least one of a hand, a finger and a forearm of the bather" as recited in independent claims 1 and 7. Notwithstanding the foregoing, in order to move prosecution forward, Applicant has amended independent claims 1 and 7 to incorporate the limitations of claims 13 and 14. As conceded by the Examiner, Jacuzzi fails to disclose or suggest such limitations. Therefore, Applicant submits that claims 1 and 7, as amended, are not anticipated by Jacuzzi and respectfully requests that claims 1 and 7 be passed to allowance.

Notwithstanding their dependency upon claims 1 and/or 7, respectively, claims 2, 4, 5, 8, and 12 have been cancelled herein, without prejudice, in order to move prosecution forward, subject to refiling in a continuation application. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 2, 4, 5, 8, and 12 under 35 U.S.C. § 102(b).

Rejections under 35 U.S.C. § 103(a)

6. Claims 1, 2, 4-8, and 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi et al. ("Jacuzzi") in view of Satterfield and Savage. Applicant has herein canceled claims 13 and 14, and amended independent claims 1 and 7 to incorporate the limitations of claims 13 and 14. With respect to claims 13 and 14, the Examiner concedes that Satterfield only teaches the provision of air bubblers/jets in the bottom portions (i.e., seats) of the bath, rather than the armrests. The Examiner then tries to rely on Savage to disclose the use of air bubblers/jets "wherever therapeutic action is desired." Applicant respectfully disagrees with the Examiner's overly broad reading of the disclosure of Savage as applied to the claims of the instant application.

As the Examiner admits, Satterfield simply describes a spa having air orifices in the seats of the spa. Satterfield completely fails to disclose or suggest that the orifices are, or may be, in the armrests "to direct a flow of water or air upward onto at least one of a hand and a forearm of the bather" as recited in claims 1 and 7.

Savage describes a bath with air jets in the floor of the bath only. Therefore, similar to Satterfield, Savage completely fails to disclose or suggest that the orifices are, or may be, in the armrests to direct a flow of water or air upward onto at least one of a hand and a forearm of the bather as recited in claims 1 and 7.

Therefore, none of the prior art cited by the Examiner discloses or suggests the use of orifices or jets in the armrests of a tub or spa to direct a flow of air or water upward onto at least one of a hand and a forearm of the bather as required by claims 1 and 7. The Examiner asserts that inclusion of orifices or jets in an armrest for directing a flow of water or air upward onto at least one of a hand and a forearm of a bather as recited in Applicant's claims would be obvious to one of ordinary skill in the art based on the public disclosure of spas that include orifices or jets in the floor or seats thereof for directing a flow of water upward onto the derriere, legs and/or back of a bather as taught by Satterfield and Savage. Applicant respectfully disagrees and

submits that Applicant's claimed armrest jets and orifices are obvious, if at all, only in hindsight after reading Applicant's specification. As the Examiner is clearly aware, use of hindsight is improper to support a conclusion of obviousness. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351 (Fed. Cir. 2001); *Rutiz v. A.B. Chance Co.*, 234 F.3d 654, 664 (Fed. Cir. 2000).

Therefore, since the Examiner has failed to cite a single prior art reference that discloses or even remotely suggests the use of orifices or jets in an armrest to direct a flow of water or air upward onto at least one of a hand and a forearm of a bather, Applicant submits that claims 1 and 7 are not obvious in view of the prior art of record and respectfully requests that claims 1 and 7 be passed to allowance.

As noted above, claims 2, 4-6, 8, 12, and 15 have been cancelled herein, without prejudice, in order to move prosecution forward, subject to refiling in a continuation application. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 2, 4-6, 8, 12, and 15 under 35 U.S.C. § 103(a).

7. Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones. Notwithstanding the dependency of claim 9 upon claim 7, claim 9 has been cancelled herein, without prejudice, in order to move prosecution forward, subject to refiling in a continuation application. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claim 9 under 35 U.S.C. § 103(a).

8. Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jacuzzi in view of Carrier and Jones, and further in view of Satterfield and Savage. Notwithstanding their dependency upon claim 7, claims 10 and 11 have been cancelled herein, without prejudice, in order to move prosecution forward, subject to refiling in a continuation application. Therefore, Applicant respectfully requests that the Examiner withdraw his rejection of claims 10 and 11 under 35 U.S.C. § 103(a).

9. The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. In the Advisory Action dated November 12, 2003, the Examiner indicated

that Applicant's period for reply to the outstanding Office Action expires five (5) months from the date of the Final Rejection (i.e., on December 1, 2003). Therefore, no extension of time fees should be required for the Examiner to consider and enter this Amendment and Response. Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111.

Respectfully submitted,

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